

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hannah Sampson	Team: Squad #6	CCRB Case #: 201705679	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 03/25/2017 12:10 PM	Location of Incident: In front of 538 9th Avenue	Precinct: 14	18 Mo. SOL 9/25/2018	EO SOL 9/25/2018	
Date/Time CV Reported Mon, 07/10/2017 2:12 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Mon, 07/10/2017 2:12 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Jeremy Mcgee	04626	940448	NARCBMS
2. Officers			NARCBMS
3. DT3 Antonio Esparra	05963	917588	NARCBMS
4. DT3 Paul Rivera	01283	940050	NARCBMS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Christopher Tabb	315	920880	NARCBMS
2. SGT Ivan Furda	02221	938512	NARCBMS

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Jeremy Mcgee	Force: Detective Jeremy McGee used physical force against § 87(2)(b)	
B. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

### Case Summary

On July 10, 2017, § 87(2)(b) filed this complaint with the CCRB via mail.

On March 25, 2017, at approximately 12:10 P.M., § 87(2)(b) was approached by a female, identified by the investigation as UC § 87(2)(b) in the vicinity of 538 9<sup>th</sup> Avenue in Manhattan. UC § 87(2)(b) asked § 87(2)(b) if he had any “hard.” § 87(2)(b) told her that he did not know what she was talking about but she followed him into a nearby building. When § 87(2)(b) exited the building, seven to eight plainclothes officers started walking towards him. Det. Jeremy McGee of Manhattan South Narcotics approached § 87(2)(b) from behind, picked him up, and “slammed” him to the ground, causing a fracture to his left arm (**Allegation A: Force**, § 87(2)(g)). Once on the ground, officers told § 87(2)(b) to, “Shut the fuck up” (**Allegation B: Discourtesy**, § 87(2)(g)). § 87(2)(b) was arrested for § 87(2)(b).

§ 87(4-b), § 87(2)(g)

Given the amount of time that elapsed since the incident date and when § 87(2)(b) filed the complaint, video footage was not pursued.

### Findings and Recommendations

#### **Allegation A – Force: Detective Jeremy McGee used physical force against § 87(2)(b)**

It is undisputed that § 87(2)(b) was arrested by members of the Manhattan South Narcotics field team. It remains disputed if Det. McGee brought § 87(2)(b) to the ground. § 87(2)(b) was interviewed at the CCRB on August 4, 2017 [BR 02]. He said that as he exited 532 9<sup>th</sup> Avenue in Manhattan, seven to eight officers dressed in plainclothes approached him from various directions. § 87(2)(b) continued walking towards the officers. One officer approached § 87(2)(b) from behind, picked him up, and “slammed him to the ground.” § 87(2)(b) could not articulate how/where on his body the officer grabbed him because everything happened so quickly. § 87(2)(b) landed face down and was handcuffed on the ground. § 87(2)(b) did not resist or pull away from the officers as they placed him in handcuffs. § 87(2)(b) alleged that he sustained a fracture to his left arm as a result of being brought to the ground but did not request medical attention while in police custody. After the encounter, § 87(2)(b) noticed his arm was swollen and went to § 87(2)(b) for testing.

§ 87(2)(b) denied engaging in any sort of transaction with UC § 87(2)(b) and said that he was imprisoned for “20 years” and did not know what “hard” meant. § 87(2)(b)

§ 87(2)(b)

On Rikers Island, § 87(2)(b) had a preliminary parole hearing. Det. McGee testified at the hearing and wore a short sleeve shirt. § 87(2)(b) knew that Det. McGee was the officer that slammed him to the ground because he noticed that Det. McGee had tattoos on his arms. § 87(2)(b) did not observe any other officer on scene with tattoos. § 87(2)(b) described Det. McGee as a Native American/Hispanic male, with a light/tan complexion, bulky build, with long hair to his shoulders, tattoos on his left arm, roughly 240 pounds, 5’9 to 5’10” tall, unknown age, with no glasses/accents. Three of the other officers involved in § 87(2)(b)’s arrest were Hispanic and the rest were white.

In a follow-up call with § 87(2)(b) on December 7, 2017, § 87(2)(b) said that he noticed the tattoos on the officer that brought him to the ground when the officer wrapped his arms around him and picked him up [BR 09]. The officer had “a bunch” of tattoos on his biceps and forearms but § 87(2)(b) did not know what they depicted. § 87(2)(b) observed multiple tattoos on both arms. § 87(2)(b) did not know of anything distinguishable about the tattoos and did not recall any particular image or text. § 87(2)(b) added that he was dizzy from being brought to the ground.

§ 87(2)(b) provided a transcript from his preliminary parole hearing conducted on § 87(2)(b), at Rikers Island Judicial Center [BR 11]. In the hearing, Det. McGee provided testimony regarding § 87(2)(b)'s arrest. On pages 18 and 19 of the document, Det. McGee stated that after receiving a positive buy sign from the ghost, identified by Det. McGee as UC § 87(2)(b) himself, Det. Rivera, and Det. Esparra moved in to apprehend § 87(2)(b). Det. McGee did not provide further details of how § 87(2)(b) was apprehended in the hearing.

Det. McGee was interviewed at the CCRB on August 17, 2017 [BR 03]. He recalled details of the buy and bust observation but did not recall the details or circumstances of § 87(2)(b)'s apprehension because he executes many arrests as part of his regular duties. Based on the tactical plan [BR 08], he believed Det. Rivera and Det. Esparra would have been present for § 87(2)(b)'s apprehension. Det. McGee added that supervisors typically come to the scene of an arrest but he did not recall which supervisor(s) responded to § 87(2)(b)'s arrest. Det. McGee did not recall any issues or struggles involved in § 87(2)(b)'s apprehension and did not recall if § 87(2)(b) was compliant with being placed under arrest. Det. McGee was informed that § 87(2)(b) described his apprehension as being picked up and slammed to the ground. This did not sound familiar to Det. McGee and he did not recall if he took any such action. Det. McGee did not recall if he brought § 87(2)(b) to the ground and did not recall if § 87(2)(b) was on the ground at any point. Det. McGee did not recall anything from the arrest that could have caused any injury to § 87(2)(b). Det. McGee wore a short sleeve shirt to his interview at the CCRB and one tribal band tattoo on his left forearm was visible.

Det. Rivera, Det. Esparra, Sgt. Christopher Tabb, and Sgt. Ivan Furda, who were all assigned to Manhattan South Narcotics at the time of this incident, also provided testimony regarding this incident. Det. Rivera was interviewed on September 15, 2017, [BR 04], Det. Esparra was interviewed on October 13, 2017 [BR 05], Sgt. Tabb was interviewed on November 2, 2017 [BR 06], and Sgt. Furda, who has since been transferred to the 13<sup>th</sup> Precinct Detective Squad, was interviewed on December 6, 2017 [BR 07]. None of the officers recalled any details of this incident. Det. Rivera wore a short sleeve shirt to his interview and no tattoos were observed on either arm. Det. Esparra stated that he has a tattoo on his left shoulder and left bicep. The tattoo on his shoulder includes text of his daughter's name. Depending on the t-shirt, a portion of the tattoo could be visible, as it extends to just above his elbow. Det. Esparra has a tattoo of Saint Michael on the inside of his left bicep which is not typically visible. Sgt. Tabb stated that he has a colored “sleeve” on his right arm that extends from his shoulder to his wrist and includes the image of a tiger. Sgt. Tabb also has a tattoo on his left shoulder that is not typically visible when wearing a standard short sleeve t-shirt. Sgt. Furda stated that he does not have any tattoos on either arm.

§ 87(2)(b) provided copies of medical records from a visit to § 87(2)(b) on May 22, 2017 [Privileged Documents 01]. Medical records for left arm testing between March 28, 2017, and May 22, 2017, were also requested from § 87(2)(b) directly. The same records as the ones provided by § 87(2)(b) were forwarded

from the center. As per the results from the left elbow MRI performed on May 22, 2017, a low grade partial thickness tear, a mild sprain of the ulnar collateral ligament, and mild swelling were found.

As per Det. Mc. Gee's memo book entry for this incident, a positive buy from UC § 87(2)(b) was logged at 12:08 P.M. and § 87(2)(b) was "under" at 12:10 P.M. [BR 12]. Sgt. Tabb has a memo book entry noting that a positive undercover buy was performed by UC § 87(2)(b) in front of 538 9<sup>th</sup> Avenue and § 87(2)(b)s] arrest time was 12:10 P.M. [BR 13]. Det. Rivera, Det. Esparra, and Sgt. Furda do not have memo book entries for this incident [BRs 14, 15, and 16, respectively].

The UC Buy Report prepared for this incident by UC § 87(2)(b) is consistent that on March, 25, 2017, at approximately 12:08 P.M., UC 349 did approach § 87(2)(b) and asked "if he had hard" [BR 17]. § 87(2)(b) then instructed UC § 87(2)(b) to follow him into 532 9<sup>th</sup> Avenue where UC § 87(2)(b) exchanged \$80.00 pre-recorded buy money for five clear zips of crack. UC 349 then displayed the positive buy sign and informed the field team of what transpired. A positive ID was made on scene.

According to the Prisoner Property Envelope Cover Sheet [BR 18] and the Criminal Court Complaint Report [BR 19], Det. Esparra recovered the pre-recorded buy money from § 87(2)(b)s left hand.

The Command Log entry for § 87(2)(b)s arrest notes that his physical/mental condition appeared normal and that no medical attention was requested [BR 20].

A request was sent to Manhattan Court Section and no Medical Treatment of Prisoner Report was on file for § 87(2)(b) [BR 21].

Det. McGee was the only officer to recall any portion of this incident and stated that the officers assigned to the prisoner van were not present for § 87(2)(b)s apprehension. The investigation concurred and determined that the officers assigned to the prisoner van, PO Michael Peña and Det. Rafael Ramirez, both of Manhattan South Narcotics, would not have added relevant testimony as § 87(2)(b)s allegations occurred at the beginning of his arrest. Therefore, PO Peña and Det. Ramirez were not interviewed. Det. McGee also said that once both § 87(2)(b) and UC § 87(2)(b) left the location of the buy, he received a positive buy signal from the ghost, identified above as UC § 87(2)(b) to move in and apprehend § 87(2)(b). Det. McGee knew from the tactical plan that the undercover officers listed were not present for § 87(2)(b)s arrest. As a result, UC § 87(2)(b) and UC § 87(2)(b) were not interviewed.

As mentioned above, it is undisputed that members of the Manhattan South Narcotics field team approached and arrested § 87(2)(b). It remains disputed if Det. McGee brought § 87(2)(b) to the ground during his apprehension. § 87(2)(b) said that upon seeing Det. McGee at his parole hearing, he recognized his tattoos and identified him as the officer that brought him to the ground. Although multiple officers on the field team have tattoos, Det. McGee stated in § 87(2)(b)s parole hearing that himself, Det. Rivera, and Det. Esparra moved in simultaneously to apprehend § 87(2)(b). Det. McGee did not mention any other officers as being present for § 87(2)(b)s apprehension and did not recall which supervisor(s) may have come to the scene of the arrest. As noted above, Det. Rivera wore a short sleeve shirt to his interview with the CCRB and no tattoos were visible on either arm. While the arrest paperwork suggests that Det. Esparra was on scene to recover the pre-recorded buy money from § 87(2)(b)s hand, based on Det. Esparra's description of his tattoos, the investigation determined that they were not likely visible during § 87(2)(b)s apprehension. § 87(2)(g)

§ 87(2)(g)

Although § 87(2)(b) alleged that he sustained a fracture to his left arm as a result of being brought to the ground, he did not request medical attention on scene and the left elbow MRI at § 87(2)(b) was not performed until nearly two months after his arrest. Therefore, the investigation could not attribute any results from that MRI to this particular incident. Furthermore, none of § 87(2)(b)'s arrest paperwork noted an injury to corroborate the fracture. § 87(2)(g)

§ 87(2)(g)

**Allegation B – Discourtesy: Officers spoke discourteously to § 87(2)(b)**

§ 87(2)(b) stated that while on the ground, all of the officers told him to, “Shut the fuck up.” § 87(2)(b) was asking why he was under arrest and told the officers that he was on parole and that they had the wrong guy. The officers continued telling § 87(2)(b) to, “Shut the fuck up” and that he was under arrest. As noted above, § 87(2)(b) did not resist or pull away from the officers as he was handcuffed.

Det. McGee did not recall saying anything in particular to § 87(2)(b) as he was being handcuffed. Det. McGee did not tell § 87(2)(b) to, “Shut the fuck up” and did not recall hearing another officer make such statement. To his knowledge, Det. McGee did not use the word “fuck” in any context while speaking to § 87(2)(b) and did not use any general profanity or hear another officer do so. Det. McGee added that supervisors typically come to the scene of an arrest but could not recall which supervisor(s) responded. Det. McGee knew from the tactical plan that the undercovers and the officers assigned to the prisoner van were not present for § 87(2)(b)'s apprehension.

As discussed above, Det. Rivera, Det. Esparra, Sgt. Tabb, and Sgt. Furda were all interviewed for this incident. None of the officers recalled this incident and denied or did not recall telling § 87(2)(b) to, “Shut the fuck up.”

As noted, it is undisputed that § 87(2)(b) was arrested by members of the Manhattan South Narcotics field team. However, given that no officer recalled the exact details or circumstances of § 87(2)(b)'s apprehension, the investigation was unable to determine which specific officers were on scene at the time of the alleged discourteous statements.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is § 87(2)(b)'s first CCRB complaint [BR 10].
- Det. McGee has been a member of the service for 11 years and has five prior CCRB allegations against him § 87(4-b), § 87(2)(g). Of the five allegations against him, three were regarding use of force. A use of a nightstick as a club allegation, hit against an inanimate object allegation, and one physical force allegation were all closed as unsubstantiated. A threat of force and a discourteous word allegation were also closed as unsubstantiated.
- Det. Paul Rivera has been a member of the service for 11 years and has eight prior CCRB allegations against him § 87(4-b), § 87(2)(g). Of the previous allegations against him, a stop, frisk, search, and refusal to provide his name and/or shield number were substantiated with charges recommended. All of the remaining allegations are physical force allegations; two were unsubstantiated and two were exonerated.
- Det. Esparra has been a member of the service for 21 years and has one prior CCRB allegation against him for refusal to obtain medical treatment. The complaint was withdrawn.

### **Mediation, Civil and Criminal Histories**

- Given § 87(2)(b)'s arrest and personal injury, this case was not suitable for mediation.
- A Notice of Claim request was sent on December 12, 2017, and will be added to the case file upon receipt.
- § 87(2)(b)

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Squad No.: \_\_\_\_6\_\_\_\_

Investigator: \_\_\_\_\_

	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date